

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JEROME S. TANNENBAUM and)
DEBORAH M. TANNENBAUM,)
Plaintiffs,)
v.)
FEDERAL INSURANCE COMPANY,)
Defendant.)

) No. 3:11-cv-01077
Judge Nixon
Magistrate Judge Griffin
JURY DEMAND

ORDER

Pending before the Court is Defendant Federal Insurance Company's Motion in Limine to Exclude All References to the Cost of Stabilizing the Hill Above Plaintiffs' Home ("Motion") (Doc. No. 92), filed with a Memorandum in Support (Doc. No. 92-1) and ten exhibits (Doc. Nos. 92-2 to 92-11). Defendant requests that the Court exclude all statements and testimony regarding the cost of stabilizing the hill located behind the property at issue as irrelevant, as such stabilization is not covered under the insurance policy at issue. (Doc. No. 92-1.) Plaintiffs Jerome S. Tannenbaum and Deborah M. Tannenbaum respond that there is a provision in the policy which includes this type of repair and that they cannot obtain the necessary permits to repair the home without first stabilizing the hill. (Doc. No. 100 at 17.)

The Court finds hill stabilization costs not to be clearly exempt from the insurance policy. As Plaintiff points out, and Defendant concedes, such costs would be covered at a rate of 10% of the loss if (1) the loss is covered under the policy and (2) such repairs are required to repair or rebuild the structure. (Doc. Nos. 100 at 16-17; 82 at 3-4.) The Court finds the question of whether Plaintiffs have shown the repairs for hill stabilization are required to repair or rebuild the property—as well as, of course, whether the loss is covered under the policy—is a question

of fact for the jury. Accordingly, the Court **DENIES** the Motion to the extent that references to the costs of the hill stabilization will not be excluded from trial as irrelevant.

It is so ORDERED.

Entered this the 29nd day of October, 2013.



JOHN T. NIXON, SENIOR JUDGE
UNITED STATES DISTRICT COURT